

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>KAREN POWELL,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No. 4:17-cv-02017-HEA</b>
	)	
<b>v.</b>	)	
	)	
<b>NICHOLAS SHELTON <i>et al.</i>,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants City of St. Louis (“City”), Ellis Brown (“Brown”), and Nicholas Shelton (“Shelton”) (collectively “Defendants”), by and through their attorney Julian Bush, City Counselor for the City of St. Louis, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, hereby submit this motion for summary judgment. In support thereof, the following statements are made:

1. Plaintiff Karen Powell (“Plaintiff”) alleges, pursuant to 42 U.S.C. § 1983, that on August 19, 2014, police officers Shelton and Brown used excessive force when they shot and killed an unarmed Kajieme Powell (“Powell”).

2. In stark contrast to Plaintiff’s baseless allegations, the undisputed facts are that Officers Brown and Shelton responded to multiple 911 calls where they encountered an agitated subject armed with a knife, later identified as Powell. Powell pulled the approximately 8 inch long knife out of his pocket and moved toward the officers with the knife in an overhand grip while yelling “shoot me.”<sup>1</sup>

---

<sup>1</sup> As used in this motion and accompanying memorandum, “overhand grip” means Powell gripped the handle of the knife with the blade pointed toward his pinky finger. (Ex. D, Shelton Aff. ¶ 19).

3. Officers Shelton and Brown repeatedly ordered Powell to drop the knife and he failed to comply. Fearing for their lives and believing Officer Shelton was about to be stabbed, Officers Shelton and Brown fired their service weapons at Powell. Powell died. This lawsuit followed.

4. Plaintiff asserts a § 1983 excessive force claim against Officers Shelton and Brown (Count I) and a state law “wrongful death” claim against City, Shelton, and Brown (Count IV).<sup>2</sup>

5. Officers Shelton and Brown’s use of force was objectively reasonable.

6. Officers Shelton and Brown are entitled to qualified immunity because their conduct comported with and did not violate clearly established law.

7. Plaintiff’s “wrongful death” claim against Officers Shelton and Brown is barred by official immunity.

8. Officer’s Shelton and Brown’s use of force was justified pursuant to RSMo. § 563.046 and RSMo. § 563.031 and Defendants are therefore entitled to an absolute defense from civil liability pursuant to RSMo. § 563.074.2. As such, Defendants respectfully request that the Court award Defendants attorney’s fees, court costs, and all reasonable expenses incurred in defense of this civil action pursuant to RSMo. § 563.074.2.

9. Plaintiff’s “wrongful death” claim against City is barred by sovereign immunity.

10. A memorandum of law in support of this motion is filed herewith and incorporated herein by reference.

---

<sup>2</sup> Counts II, III, V, and VI were previously dismissed. (Doc. 34).

WHEREFORE, for all of the reasons set forth above, Defendants respectfully requests that this honorable Court grant summary judgment in favor of Defendants and against Plaintiff.

Respectfully submitted,

JULIAN BUSH  
CITY COUNSELOR

/s/ Andrew D. Wheaton  
Andrew D. Wheaton #65269 MO  
Associate City Counselor  
Attorney for Defendants  
City Hall, Room 314,  
St. Louis, MO 63103  
314.622.3361  
FAX: 314.622.4956  
wheatona@stlouis-mo.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2020, the foregoing was electronically filed with the Clerk of the Court to be served by operation of the Court's electronic filing system.

/s/ Andrew D. Wheaton